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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.447 OF 2006
IN
SUIT NO.329 OF 1981

Central Bank of India)).. Plaintiff

Versus

The Sion Bakers & Confectioners Pvt.)
and others)).. Defendants

Ms.Pratibha Mehta i/b.Little & Co. for the Plaintiff.

Mr.Ajay K.J. Panickar for Defendant No.3.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 20TH JULY 2006

P.C.:

. The present Chamber Summons has been taken out for permission to lead secondary evidence. According to the Plaintiff, all the documents relied upon, copies of which have been annexed to the Plaint, have been misplaced. The Plaintiff, therefore, finds it necessary to lead secondary evidence in respect of these documents.

2. Defendant No.3 opposes this application by contending that the documents which are annexed to the Plaint are typed copies of the original documents. Producing photo copies of such typed copies of the original documents would not amount to leading secondary evidence, according to the learned Advocate for

Defendant No.3. There is serious dispute as to whether the amount which is reflected in the typed copy of the agreement annexed to the Plaint at Exhibit "J". The amount shown is Rs.3,02,000/-. The Defendant has annexed to his affidavit in reply a xerox copy of the form of guarantee, which, according to Defendant No.3, was furnished to him by the Bank when he executed various documents. This document does not bear any figure indicating the amount for which guarantee has been given.

3. In view of the serious dispute as to whether the original document was executed by the Defendant No.3 with any figure or by keeping it blank, it would not be proper to allow the Plaintiff to lead secondary evidence in respect of the Letter of Guarantee.

4. Apart from this, Section 63 of the Indian Evidence Act, 1872, defines secondary evidence. A Photo copy or a typed copy would not constitute secondary evidence according to the learned Advocate for Defendant No.3. However, the Plaintiff relies on Section 63(3) by pointing out that the person who has compared the typed copy with the original has filed the affidavit in support of the Chamber Summons. In view of this, secondary evidence may be led in respect of all the documents on which the Plaintiff relies on except the Letter of Guarantee.

5. Chamber Summons disposed of accordingly.